



**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**RIN 0648-BL46**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Amendment 50**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Announcement of availability of fishery management plan amendment; request for comments.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) submitted Amendment 50 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 50 to the FMP would establish a new rebuilding plan, revise the acceptable biological catch (ABC), annual optimum yield (OY), annual catch limits (ACLs), sector allocations, recreational accountability measures (AMS), and additional management measures for red porgy. The additional management measures would address commercial seasonal quotas, commercial trip limits, recreational bag and

possession limits, and a recreational fishing season for red porgy. The purpose of Amendment 50 is to end overfishing of red porgy, rebuild the stock, and achieve OY while minimizing, to the extent practicable, adverse social and economic effects.

**DATES:** Written comments must be received on or before [insert date 60 days after date of publication in the *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on Amendment 10, identified by "NOAA-NMFS-2022-0054," by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter "NOAA-NMFS-2022-0054" in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Frank Helies, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All

personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 50, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at

*<https://www.fisheries.noaa.gov/action/amendment-50-catch-level-adjustments-rebuilding-schedule-and-allocations-red-porgy/>*.

**FOR FURTHER INFORMATION CONTACT:** Frank Helies, telephone: 727-824-5305, or email: *frank.helies@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or FMP amendment to the Secretary of Commerce (the Secretary) for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The Council prepared the FMP that is being revised by Amendment 50. If approved, Amendment 50 would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

### **Background**

The Council manages the snapper-grouper fishery, including red porgy, in Federal waters from North Carolina south to the Florida Keys in the South Atlantic under the FMP. The Magnuson-Stevens Act requires NMFS and regional fishery management councils prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

All weights described in this notice are in gutted weight, unless otherwise specified.

In 1990, a stock assessment for red porgy was completed and it was determined that the stock was subject to overfishing and overfished. As a result of that stock status, Amendment 4 to the FMP established an initial rebuilding plan and implemented a minimum size limit for red porgy (56 FR 56016, October 31,

1991). The rebuilding plan was put into effect in 1991 with a target time to rebuild of 10 years. The stock was again assessed in 1999 and was determined to be subject to overfishing and overfished. Through an emergency rule published in 1999, NMFS prohibited the harvest and possession of red porgy in or from the exclusive economic zone off the southern Atlantic states (64 FR 48324, September 3, 1999). NMFS subsequently extended the emergency rule to prohibit the harvest and possession of red porgy through August 28, 2000 (65 FR 10039, February 25, 2000).

The final rule to implement Amendment 12 to the FMP replaced the emergency rule and closed commercial harvest during the red porgy peak spawning season, reduced the commercial trip limit, and reduced the recreational bag limit (65 FR 51248, August 23, 2000). Amendment 12 also specified a new 18-year rebuilding plan, that began with the implementation of the emergency rule that prohibited harvest on September 3, 1999. The red porgy stock was assessed again in 2002, as the first stock in the South Atlantic to be assessed through the Southeast Data, Assessment, and Review (SEDAR) process (SEDAR 1). The SEDAR 1 assessment indicated the stock was overfished but not undergoing overfishing. Subsequent update assessments in 2006 and 2012 also resulted in the same stock

status determinations as the 2002 SEDAR 1 assessment. The red porgy stock has not rebuilt despite management efforts throughout its management history.

The most recent SEDAR stock assessment for South Atlantic red porgy (SEDAR 60) was completed in April 2020. The assessment included data through 2017 and incorporated the revised estimates for recreational catch from the Marine Recreational Information Program Fishing Effort Survey (MRIP FES). The Council's Scientific and Statistical Committee (SSC) reviewed SEDAR 60 at their April 2020 meeting and found that the assessment was conducted using the best scientific information available, and was adequate for determining stock status and supporting fishing level recommendations. The findings of the assessment indicated that the South Atlantic red porgy stock is overfished and undergoing overfishing. NMFS also determined that the red porgy stock has not made adequate progress towards rebuilding because it did not rebuild by the end of 2017 under the previous 18-year rebuilding plan.

The findings of SEDAR 60 showed a declining trend in average recruitment throughout the time series reviewed in the assessment, and red porgy has made little progress towards rebuilding, given the low recruitment in recent years. The projections within

SEDAR 60 indicate the revised ABCs would have only a very minor impact on stock rebuilding. If recruitment continues to be low, the productivity of the stock and the benchmark management reference points would need to be reevaluated. The red porgy stock is currently scheduled to be assessed again in 2025.

Following a notification from NMFS to a Council that a stock is undergoing overfishing and is overfished, the Magnuson-Stevens Act requires the Council to develop an FMP amendment with actions that immediately end overfishing and rebuild the affected stock. The Council developed Amendment 50 in response to the results of SEDAR 60.

The Council intends that Amendment 50 would end overfishing of South Atlantic red porgy, rebuild the stock, and achieve OY while minimizing, to the extent practicable, adverse social and economic effects. The Council would also revise the overfishing limit for red porgy equal to the ABC, and update other biological reference points in this amendment.

#### **Actions Contained in Amendment 50**

Amendment 50 would establish a new rebuilding plan, and revise the catch levels (ABCs and ACLs), sector allocations, recreational AMs, and management measures for red porgy. Management measures would address commercial seasonal quotas, commercial trip

limits, recreational bag and possession limits, and a recreational fishing season for red porgy.

*Rebuilding Plan for the South Atlantic Red Porgy Stock*

As discussed above, the Council implemented an 18-year rebuilding plan for the South Atlantic red porgy stock through Amendment 12 to the FMP that was expected to rebuild the stock by the end of 2017 (65 FR 51248, September 22, 2000). Because the South Atlantic red porgy stock did not rebuild within that time, and is still overfished, Amendment 50 would establish a new rebuilding plan schedule equal to the time estimated to rebuild the stock while maintaining fishing mortality at 75 percent of the maximum fishing mortality threshold during the rebuilding period. This rebuilding period would be 26 years, beginning in 2022 and ending in 2047.

*ABC and Annual OY*

The current ABC for red porgy was implemented in Regulatory Amendment 18 to the FMP, based upon a stock assessment update (2012 SEDAR 1 Update) and the Council's SSC's recommendations (78 FR 47574, August 6, 2013).

In April 2020, the Council's SSC reviewed the latest stock assessment (SEDAR 60) and recommended new ABC levels as determined by SEDAR 60. The assessment and associated ABC recommendations incorporated the



revised estimates for recreational catch and effort from the MRIP Access Point Angler Intercept Survey (APAIS) and FES. MRIP began incorporating a new survey design for APAIS in 2013 and replaced the Coastal Household Telephone Survey (CHTS) with FES in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS). As explained in Amendment 50, total recreational fishing effort estimates generated from MRIP FES are generally higher than both the MRFSS and MRIP CHTS estimates. This difference in estimates is because MRIP FES is designed to more accurately measure fishing activity, not because there was a sudden increase in fishing effort. The MRIP FES is considered a more reliable estimate of recreational effort by the Council's SSC, the Council, and NMFS, and more robust compared to the MRIP CHTS method. The new ABC recommendations within Amendment 50 also represent the best scientific information available as determined by the SSC.

The Council chose to specify OY for red porgy on an annual basis and set it equal to the ABC and total ACL, in accordance with the guidance provided in the Magnuson-Stevens Act National Standard 1 Guidelines at 50 CFR 600.310(f)(4)(iv), and using the formula

implemented through the Comprehensive ACL Amendment to the FMP (77 FR 15915, March 16, 2012).

#### *Total ACL*

As implemented through Regulatory Amendment 18 to the FMP, the current total ACL and annual OY for red porgy are equal to the current ABC of 328,000 lb (148,778 kg), whole weight. In Amendment 50, the Council would revise the ABC based on SEDAR 60 and the recommendation of the SSC, and keep the ABC, ACL, and OY equal to each other.

Amendment 50 would revise the total ACL equal to the recommended ABC of 75,000 lb (34,019 kg), whole weight, 72,115 lb (32,711 kg), gutted weight, for 2022; 81,000 lb (36,741 kg), round weight, 77,885 lb (35,328 kg), gutted weight, for 2023; 87,000 lb (39,463 kg), round weight, 83,654 lb (37,945 kg), gutted weight, for 2024; 91,000 lb (41,277 kg), round weight, 87,500 lb (39,689 kg), gutted weight, for 2025; and 95,000 lb (43,091 kg), round weight, 91,346 lb (41,434 kg), gutted weight, for 2026 and subsequent fishing years.

#### *Sector Allocations and ACLs*

Amendment 50 would revise the commercial and recreational allocations for red porgy. The current sector ACLs for red porgy are based on the commercial and recreational allocations of the total ACL at 50.00

percent and 50.00 percent, respectively, that were established through Amendment 15B to the FMP (74 FR 58902 November 16, 2009).

The new red porgy sector allocations in Amendment 50 would result in commercial and recreational allocations of 51.43 percent and 48.57 percent, respectively. The proposed sector allocations result from applying the allocation formula adopted through the Comprehensive ACL Amendment to the FMP, which is  $ACL = ((\text{mean landings } 2006-2008) * 0.5)) + ((\text{mean landings } 1986-2008) * 0.5)$ , to the revised total ACL that includes updated recreational landings from the MRIP FES method.

Utilizing the proposed allocation formula would incorporate revised recreational landings from the MRIP FES, which would result in a slight shift of allocation to the commercial sector. Although commercial fishing tends to occur in deeper water than recreational fishing, where mortality of discarded fish is greater, the Council reasoned that a slightly increased allocation to the commercial sector would potentially reduce the number of fish that are discarded if the commercial ACL is reached in-season and a sector closure becomes necessary, thus promoting conservation.

The commercial ACLs would be 37,089 lb (16,823

kg), for 2022; 40,056 lb (18,169 kg), for 2023; 43,023 lb (19,515 kg), for 2024; 45,001 lb (20,412 kg), for 2025; and 46,979 lb (21,309 kg), for 2026 and subsequent years.

The recreational ACLs would be 35,026 lb (15,888 kg), for 2022; 37,829 lb (17,159 kg), for 2023; 40,631 lb (18,430 kg), for 2024; 42,499 lb (19,277 kg), for 2025; and 44,367 lb (20,125 kg), for 2026 and subsequent years.

Regulatory Amendment 27 to the FMP established two commercial fishing seasons for red porgy with 30 percent of the commercial ACL allocated to Season 1 (January through April) and 70 percent allocated to Season 2 (May through December) (85 FR 4588, January 27, 2020). Any remaining commercial quota from Season 1 would be added to the commercial quota in Season 2. Any remaining quota from Season 2 would not be carried forward into the next fishing year. Amendment 50 would not alter the current fishing seasons or commercial season ACL allocations.

Under Amendment 50, the commercial quotas in 2022 for Season 1 would be 11,127 lb (5,047 kg) and Season 2 would be 25,962 lb (11,776 kg); in 2023, Season 1 would be 12,017 lb (5,451 kg) and Season 2 would be 28,039 lb (12,718 kg); in 2024, Season 1 would be 12,907 lb (5,855 kg) and Season 2 would be 30,116 lb

(13,660 kg); in 2025, Season 1 would be 13,500 lb (6,123 kg) and Season 2 would be 31,501 lb (14,289 kg); and for 2026 and subsequent years, Season 1 would be 14,094 lb (6,393 kg) and Season 2 would be 32,886 lb (14,917 kg).

#### *Commercial Trip Limits*

Amendment 13C to the FMP established the current commercial trip limit for red porgy of 120 fish from May 1 through December 31, with no harvest allowed from January through April (71 FR 55096, September 21, 2006). Regulatory Amendment 27 to the FMP removed the January to April commercial spawning season closure and established the current 60 fish trip limit from January 1 through April 30, to reduce discarding of red porgy by the commercial sector during the early part of the fishing year. Amendment 50 would modify the commercial trip limits for red porgy to be 15 fish for both Seasons 1 and 2.

Under the proposed 15-fish trip limit, the lowest trip limit that was considered by the Council, commercial fishermen could retain an amount of red porgy over the longest amount of time during the fishing seasons and would increase the likelihood of red porgy remaining open to commercial harvest and available to consumers for as long as possible. Additionally, the proposed trip limit is expected to

minimize discards of incidentally harvested red porgy when targeting other snapper-grouper species such as gray triggerfish and vermilion snapper.

#### *Recreational Bag and Possession Limits*

The current recreational bag and possession limits for red porgy in the South Atlantic, established by Amendment 13C to the FMP, are 3 per person per day, or 3 per person per trip, whichever is more restrictive. Amendment 50 would reduce the recreational bag and possession limits to 1 fish per person per day, or 1 fish per person per trip, whichever is more restrictive.

Given the substantial reduction in harvest needed to end the overfishing of red porgy and increase the likelihood of rebuilding the stock, the Council selected the lowest bag limit that was considered in Amendment 50 to continue to allow recreational retention and to help constrain harvest to the reduced recreational ACL.

#### *Recreational Fishing Season*

The recreational harvest of red porgy is currently allowed year-round until the recreational ACL is met or is projected to be met. Amendment 50 would establish a recreational fishing season for red porgy where harvest would be allowed May 1 through June 30. The recreational sector would be closed

annually from January 1 through April 30, and July 1 through December 31. During the proposed seasonal closures, the recreational bag and possession limits for red porgy would be zero.

Given the substantial reductions in harvest that are needed to address the stock's overfishing and overfished determinations, shortening the time recreational fishing is allowed contributes to reducing the risk that recreational catches exceed the proposed reduced ACL. The Council selected the most conservative recreational fishing season alternative in Amendment 50 to reduce the chance the recreational ACL would be exceeded, while still allowing some recreational harvest opportunities to occur.

#### *Recreational AMs*

The current recreational AMs were established through Amendment 34 to the FMP (81 FR 3731, January 22, 2016). The AM includes an in-season closure for the remainder of the fishing year if recreational landings reach or are projected to reach the recreational ACL, regardless of whether the stock is overfished. The AM also includes post-season adjustments. If recreational landings exceed the recreational ACL, then during the following fishing year recreational landings will be monitored for a persistence in increased landings. If the total ACL is

exceeded and red porgy are overfished, the length of the recreational fishing season and the recreational ACL are reduced by the amount of the recreational ACL overage.

Amendment 50 would revise the recreational AMs for red porgy. The current in-season closure and the post-season AM would be removed. The proposed recreational AM would be a post-season AM that would be triggered in the following fishing year if the recreational ACL is exceeded. If recreational landings exceed the recreational ACL, the length of the following year's recreational fishing season would be reduced by the amount necessary to prevent the recreational ACL from being exceeded in the following year. However, the length of the recreational season would not be reduced if the Regional Administrator determines, using the best scientific information available, that a reduction is not necessary.

The Council's intent in revising the recreational AMs is to avoid in-season closures of the recreational sector and extend maximum fishing opportunities to the sector during the proposed 2-month recreational season. The proposed AM would remove the current potential duplicate AM application of a reduction in the recreational season length and a payback of the recreational ACL overage if the total ACL was



exceeded. Under this proposed measure, the AM trigger would not be tied to the total ACL, but only to the recreational ACL. The proposed modification would ensure that overages in the recreational sector do not in turn affect the catch levels for the commercial sector. Any reduced recreational season length as a result of the AM being implemented would apply to the recreational fishing season following a recreational ACL overage.

#### **Proposed Rule for Amendment 50**

A proposed rule to implement Amendment 50 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule for Amendment 50 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **FEDERAL REGISTER** for public review and comment.

#### **Consideration of Public Comments**

The Council has submitted Amendment 50 for Secretarial review, approval, and implementation. Comments on Amendment 50 must be received by *[insert date 60 days after date of publication in the FEDERAL REGISTER]*. Comments received during the respective comment periods, whether specifically directed to Amendment 50 or the proposed rule, will be considered

by NMFS in the decision to approve, partially approve, or disapprove, Amendment 50. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 6, 2022.

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Kelly Denit,

Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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